

and transactions in the King's Court." Against such an use this Statute was made. It seems to have been the opinion of some, that at common law every recovery, except by render, bound the wife, and that the Statute aids only against a recovery by default, and so the concluding words of the clause concerning default seem to be—*ut de cetero hujusmodi ambiguitas amputetur*. Perkins, however, Dower, 376, states that the Statute is but an affirmation of the common law.

Perkins shews, however, that such recoveries are liable to be falsified only in cases where the husband had right and the recoverer had none. For example, the husband being disseised by A. re-enters: A. arraigns an assize, the husband confesses a disseisin, A. releases damages and has judgment to recover and enters, the wife shall **notwithstanding* have **111** her dower. So if A., having been disseised by the husband, release all his right to the husband, and then notwithstanding the release brings a writ of entry in the nature of an assize and recovers against him by default, the wife shall be endowed. In these cases the husband had the right and the recoverer had none. But if the heir of a disseisor is in by descent, and the disseisee nevertheless re-enters and then takes a wife, a recovery against the husband by redition or default in a writ of entry in the nature of an assize takes away dower from the wife. The reason is, that the descent from the disseisor to his heir tolled or took away the entry of the disseisee, the husband, and put him to his action to recover possession, so that the recoverer had right according to the nature of his action, and consequently the possession which the husband had during the coverture was defeated. But the case would have been otherwise had the marriage taken place before the disseisin.

Many other cases are put by Perkins, Dower, 376-386. Thus if a *praecipe* be brought against a husband, who pleads misnomer or joint tenancy and it is found against him, so that the demandant recovers, the wife may falsify here and recover her dower, unless the demandant really had right. On the other hand, such pleas going merely in abatement of the writ, the wife would not be permitted to falsify a recovery by default, by saying that her husband might have pleaded them; although if she could shew that the recoverer had only a joint cause of action with a stranger, who before action brought had released to her husband in possession, on setting forth the release she might falsify the recovery as to one moiety of the land. And where the husband has a good defence to the action, and the verdict is found against him on his traverse of the points of the writ, instead of the action of the writ, e. g. where he traverses in a writ of *mort d'ancestor* that the demandant's ancestor was seised in fee simple, the demandant being issue in tail and so having mistaken his action: or where the husband, having a release of all the demandant's right, instead of pleading it, sets out a title in himself, which on a traverse of it is found against him, the wife may falsify the recovery.

On the whole, where the husband's title through his default or laches was never tried against him in his life-time, the wife may falsify a recovery had against him. And she may also falsify a recovery had against him by action tried, but it must be in another point, and not in the very same which was tried by the recovery.

The second section of the Statute is not in force.